

FINAL AWARD ALLOWING COMPENSATION  
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 97-489207

Employee: Jacqueline Boyd

Employer: Sanford L. Willis  
d/b/a Sanford's Supper Club

Insurer: Uninsured

Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

Date of Accident: October 21, 1997

Place and County of Accident: St. Louis County

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated March 6, 2006. The award and decision of Administrative Law Judge Joseph E. Denigan, issued March 6, 2006, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 28<sup>th</sup> day of June 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Jacqueline Boyd

Injury No.: 97-489207

Dependents: N/A Before the  
**Division of Workers'**  
Employer: Sanford L. Willis **Compensation**  
d/b/a Sanford's Supper Club Department of Labor and Industrial  
Relations of Missouri  
Additional Party: Second Injury Fund Jefferson City, Missouri  
Insurer: Uninsured  
Hearing Date: December 14, 2005 Checked by: JED:tr

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: October 21, 1997
5. State location where accident occurred or occupational disease was contracted: St. Louis County
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Uninsured
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Employee burned herself while cooking.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Lower extremities, genitalia, hand
14. Nature and extent of any permanent disability: None sought
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Jacqueline Boyd Injury No.: 97-489207

17. Value necessary medical aid not furnished by employer/insurer? \$24,160.98
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: N/A
20. Method wages computation: N/A

### COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$24,160.98

22. Second Injury Fund liability: Yes

Liability for uninsured employer \$24,160.98

TOTAL: \$24,160.98

23. Future requirements awarded: None sought

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Brian McChesney

## FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Jacqueline Boyd	Injury No.: 97-489207
Dependents:	N/A	Before the <b>Division of Workers'</b> <b>Compensation</b>
Employer:	Sanfords Supper Club	Department of Labor and Industrial
Additional Party:	Second Injury Fund	Relations of Missouri Jefferson City, Missouri
Insurer:	Uninsured	Checked by: JED:tr

This case involves a burn injury resulting to Claimant with the reported accident date of October 21, 1997. Employer is uninsured and remains in default without representation here today despite certified notice to Employer from the Division. The Second Injury Fund (hereafter "SIF") is a party to this claim. Claimant seeks only the recovery of her unpaid medical expenses herein as provided by Section 287.220.5 RSMo (2000). Preliminary to this analysis is the determination of jurisdiction.

### FINDINGS OF FACT

1. Claimant testified that she worked for Sanfords Supper Club for approximately seven months prior to her injury. She worked forty hours per week for \$7.00 per hour. She testified that the owner operated a restaurant that hosted parties on the weekends and a comedy club on Thursday nights.

2. She named four other employees, but was unable to recall their last names. Claimant explained that the Supper Club had servers, janitors and dishwashers, all employed by Sanford Willis. Claimant further testified that she received her paycheck with the other employees every two weeks, directly from Mr. Willis.
3. Claimant testified that on October 21, 1997, she slipped and fell onto hot oil/grease in the kitchen area of the Supper Club. She sustained severe burns to gross areas of her legs, thighs, genital area, and hand. [\[1\]](#)
4. Claimant produced exhibits of medical records, pictures, and \$24,160.98 in medical bills (Exhibit A).
5. A letter from Division agent Amy Frank reveals Employer did not have insurance coverage recorded with her office on the reported date of injury.
6. The SIF relies on evidence, although presented by Claimant, from the Division of Employment Security indicating that for the fourth quarter of 1997, Sanford L. Willis had only one employee (Exhibit C).

### RULINGS OF LAW

Claimant was an employee of Sanford Willis on the reported accident date. Sanford Willis employed five or more employees on said date. Claimant incurred \$24,160.98 in medical bills for her injuries sustained at Mr. Willis supper club.

The SIF is responsible for the unpaid medical bills when an employer, who is governed by the Workers' Compensation Act, fails to maintain workers' compensation insurance. §287.220.5 RSMo (2000). A claimant has the burden of proof concerning the necessary elements of his claim, including proof that his employer was an "employer" subject to the provisions of the Workers' Compensation Act. *Breeze v. Helm and Sons Lumber Company*, 23 S.W.3d 886, 891 (Mo.App. S.D. 2000), citing *Brown v. City of St. Louis*, 842 S.W.2d 163, 166 (Mo.App. E.D. 1992).

An "employer" must have five employees to fall under the purview of the statute. §287.030.1(3) RSMo (2000). An "employee," is a person who is employed by the same employer for at least five and one half consecutive work days. §287.020.6 RSMo. (2000). A worker need not actually *work* for more than five and one half consecutive days but need only be in the employer's *employment* for that length of time. *Breeze*, at 889, citing *Metcalf v. Castle Studios*, 946 S.W.2d 282, 285 (Mo.App. W.D. 1997).

Thus, assuming the named workers may be defined as employees under §287.020(1), Claimant still had the burden of proving that any of those individuals were employed by Employer for at least five and one half consecutive days as of October 21, 1997. Here, Claimant testified that she worked forty hours per week for seven months. It is reasonable to infer that the employees she identified *worked* with her during that period, i.e. for at least five and one half consecutive days as of the reported injury. Claimant's testimony was probative on this point.

Claimant presented the record from the Division of Employment Security that had one employee listed for Sanford Willis. The SIF suggests this designation is dispositive evidence that Mr. Willis did not have five or more employees. Claimant's testimony to the contrary was credible and uncontroverted. An evaluation of the evidence as a whole requires notice that this filing is a unilateral designation and, perhaps, under the circumstances of this case, self-serving. Note is made of Claimant's assertion that Mr. Willis refused issuance of W-2 forms which contributes to a pattern of unconventional business conduct by Mr. Willis.

While perhaps relevant on its face, a filing from another agency may not be binding in another forum. Rather, proffer of such filings constitutes an evidentiary expedient and is merely conventional practice at the Division since many small (or failed) businesses lack the organization and records storage to facilitate discovery of employee names. Mr. Willis is no longer in business and his default status obstructs discovery. Claimant's testimony must be given greater weight because it was independently credible and Mr. Willis' collateral business filings cannot be said with reasonable certainty to be reliable.

### Conclusion

Accordingly, on the basis of the substantial competent evidence contained within the whole record, the Division has jurisdiction of this case and Claimant is found to have incurred \$24,160.98 in medical bills related to the reported injury. Since Employer is uninsured, the SIF assumes responsibility therefor under Section 287.220.5 RSMo (2000). The matter is referred to the Fraud and Non-Compliance Unit for investigation.

Date: \_\_\_\_\_ Made by: \_\_\_\_\_

Joseph E. Denigan  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secrest  
*Director*  
*Division of Workers' Compensation*

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[\[1\]](#) Note is made that Chapter 287 does not compensate for disfigurement of the torso or legs. §287.190.4 RSMo (2000).